

**Case Law  
Compliance Refresher  
PFP Reunion 2017**

**What would you do?**



# Legal Foundation

- Individuals with Disabilities in Education Improvement Act of 2004 (IDEA)
- 22 PA Code Chapter 14
- 22 PA Code Chapter 711
- US Court of Appeals for the Third Circuit
  - Pennsylvania
  - Delaware
  - New Jersey
  - Virgin Islands
- US Supreme Court Decisions
- Section 504 of the Rehabilitation Act



# Legal Framework

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- Credibility determination
  - T.E. v Cumberland Valley SD
  - A.S. v ODR
- Burden of persuasion - Schaffer v Weast

# Legal Framework

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## Schaffer v Weast

The burden of persuasion in an administrative hearing challenging an IEP is properly placed upon the party seeking relief, whether that is the child with a disability or the LEA.

# WWYD?

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**Case number 18615**



# Issues

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- FAPE esp. re: Sec Transition
- Transition services
- Compensatory Education and reimbursement
- Psychoeducational & occupational therapy evaluations

# Essential Questions

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- *Did the LEA deny FAPE?*
- *If so, is the student entitled to compensatory education?*
- *Is an evaluation for OT and an IEE needed?*

# Analysis

- If you were the hearing officer, what questions would you pose in order to draw a conclusion for the case?
- What legal framework governs consideration in this scenario?
- What past court case decisions may impact the decision?



# Read Case #18615



# Legal Framework - FAPE

FAPE (Free, Appropriate Public Education) means special education and related services that are provided at public expense, meet the standards of the SEA, include an appropriate education in the state involved, and are provided in conformity with an IEP.

- Board of Education of Hendrick Hudson Central SD v **Rowley**
- Endrew F. v Douglas County SD

# Legal Framework - Transition

*Transition services* means a coordinated set of activities for a child with a disability that—

(1) Is designed to be within a results oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community

(2) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests;. It includes: Instruction; Related services; Community experiences; The development of employment and other post-school adult living objectives; and If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

*Transition services* for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.

(Authority: 20 U.S.C. 1401(34))

# Legal Framework - Evaluation

- Independent Educational Evaluation
  - Provided at public expense when parent disagrees with LEAs evaluation
  - LEA never conducted one for parents to disagree
- Occupational Therapy
  - Recommended to be done but wasn't
  - Parents indicated sensory issues
- FBA – never conducted even though MD

# Legal Framework – Comp Ed

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Compensatory education - a remedy owed to children with a disability who have been denied a Free Appropriate Public Education (FAPE).

- Violation of Child Find provisions
- Failure to implement an appropriate IEP
- Failure to offer an appropriate IEP

# Essential Questions

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- *Did the LEA deny FAPE?*
- *If so, is the student entitled to compensatory education?*
- *Is an evaluation for OT and an IEE needed?*

# Conclusion

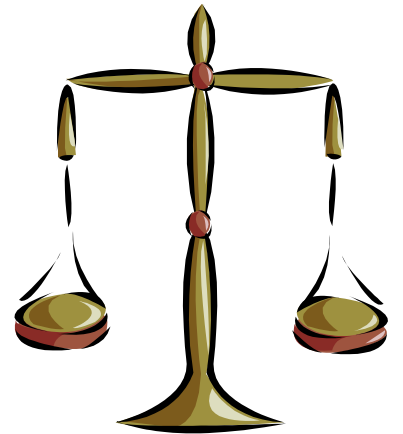
**I. YES:** The SD failed to provide FAPE and owes compensatory ed for both years along with an IEE and OT eval

**Reason:** Significant changes to post-secondary transition programming amounted to denial of FAPE. LEA never conducted an evaluation for parents to disagree with but HO ordered one be conducted. OT eval was never conducted, relied solely on parents input. FBA was not conducted

# WWYD?

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**Case number 18166**





# Issues

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- FAPE
- Communication
- Compensatory education

# Essential Questions

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- *Did the LEA deny FAPE to the student?*
- *If so, is the student entitled to compensatory education?*

# Analysis

- If you were the hearing officer, what questions would you pose in order to draw a conclusion for the case?
- What legal framework governs consideration in this scenario?
- What past court case decisions may impact the decision?

# Read Case #18166



# Legal Framework - Communication

- Students with disabilities, like all students, must have the opportunity to fully participate in our public schools. A critical aspect of participation is communication with others.
- Three Federal laws address the obligation to meet the communication needs of students with disabilities in different ways
  - IDEA
  - Title II of the ADA
  - Section 504 of the Rehabilitation Act of 1973
- Public schools must comply with all three laws, and while compliance with one will often result in compliance with all, sometimes it will not.

# Essential Questions

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- *Did the LEA deny FAPE to the student?*
- *If so, is the student entitled to compensatory education?*

# Conclusion

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**2. NO:** The District provided the student with FAPE and does not owe the student compensatory education.

Reason: The parents wanted the SD to teach the child sign language (Signed Pidgeon English). The student had a learning style that was inconsistent as well as some physical limitations (inability to: adequately separate fingers, cross midline, and coordinate both hands). Therefore, SD opted for a dual-mode communication system using signs and an augmented communication device

# Legal Framework

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Compensatory Education is intended to be a one-time offer to compensate for past denial of FAPE and doesn't relieve the School District of providing FAPE on a go forward basis.

*What does this mean?*



# Table Talk

- What do most of the cases presented today hinge upon?
- Have you been to due process?
- If so, what did you learn from it?

